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### CHAPTER THREE

#### FAIR HEARINGS

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## Chapter 3. Fair Hearings

### Rule No. 560-X-3-.01. Fair Hearings - General

(1) The State Plan provides that the office of the Governor acting through Medicaid, will be responsible for fulfillment of hearing provisions for all matters pertaining to the Medical Assistance Program under Title XIX. An opportunity for a fair hearing shall be granted to any individual or provider of services requesting a hearing because a claim for medical assistance or payment for services provided a recipient is denied or is not acted upon with reasonable promptness, or because the party is aggrieved by any other agency action regarding receipt of medical assistance or payment for services, or by an agency policy as it affects the situation, except as noted in paragraphs 3 and 4 below.

(2) The Hearing Authority for all recipient and provider fair hearings for Alabama Medicaid Agency is the Commissioner, who shall appoint one or more Hearing Officers, to conduct fair hearings and submit findings and recommendations to the Commissioner for final decision on each case. The Hearing Officer must not have been involved in any way with the action in question.

(3) In general, eligibility for Medicaid is based on eligibility for certain public assistance programs administered by the Department of Human Resources, and the Social Security Administration. Complaints concerning eligibility matters shall be referred to the appropriate agency which made the eligibility determination for a hearing. Procedures shall be set by the hearing agency.

(4) Matters pertaining to hospital or nursing home decertification for both Title XVIII and XIX will be referred to the Federal Health and Human Services Director for Health Standards and Quality in Region IV. His office is responsible for making final decisions on joint program decertification.

Authority: State Plan; Title XIX of the Social Security Act. Rule effective October 1, 1982. Effective date of amendment June 23, 1983.

### Rule No. 560-X-3-.02. Fair Hearings - Definitions.

(1) A fair hearing is a face-to-face hearing by an impartial State Hearing Officer at a time and place reasonably convenient for the complainant and attended by the complainant or his authorized representatives who may call witnesses or examine witnesses called by others.

(2) A Documentary Hearing is one in which all the evidence for both the complainant and the agency is presented to the hearing officer in written form. He then makes his recommendations based on the evidence presented. Recommendations and decisions in documentary hearings have the same authority as those rendered in a face-to-face hearing.

Authority: Section 1902(a)(3), Title XIX of the Social Security Act; 42 CFR Sec. 431.200 thru 431.245 and Section 41-22-12, Alabama Administrative Procedure Act. Rule effective October 1, 1982. Amended August 9, 1984, and January 1, 1986. Effective date of this amendment August 10, 1987.

Rule No. 560-X-3-.03. Fair Hearing Procedures for Recipients and Providers.

(1) The procedures contained herein have been adopted by Medicaid to settle formal complaints of persons who are receiving care under the Medicaid program or who have been denied care under this program because of eligibility standards, or for providers who desire a fair hearing upon denial of a claim for services, out-dated claim and non-renewal or termination of a contract. At the request of a provider, the Commissioner may grant a fair hearing on any other matter pertinent to Medicaid.

(2) Except where the Secretary of Health and Human Services had determined that a provider must be removed from the program for abuse, the Commissioner of Medicaid shall, in writing, offer a provider a fair hearing prior to suspension or termination from the Alabama Medicaid Program. If the provider does not respond within 10 days of the written offer he will be terminated from the program without further action.

(3) When provider criminal fraud is suspected, the Commissioner shall cause her/his appropriate staff to consult with the Office of the Attorney General prior to offering a fair hearing for termination purposes.

(4) A complainant, or authorized person acting for him, may request a fair hearing in writing if he is not satisfied with actions taken that relate specifically to himself. Persons desiring a hearing within the jurisdiction of Medicaid will be referred to the Director, Hearings, for appropriate scheduling.

(5) Except for the specific situations outlined below a written request for a fair hearing must be received by Medicaid within 60 days following the notice of action which prompts a claimant to request a hearing. Medicaid will not accept requests for fair hearings which are outside the 60 day limit. The exceptions to the 60 day limit are as follows:

(a) In a case in which Medicaid is terminating recipient eligibility, if a hearing request is received within 10 days of the date of the notice of action, benefits may be continued pending outcome of the hearing unless there are unnecessary delays in finalizing the hearing caused by the recipient or the recipient's representative.

(b) In a case in which Medicaid is suspending or terminating a Medicaid provider, if a hearing request is received within 10 days of receipt of the notice of termination, the provider may continue to remain as a Medicaid provider pending outcome of the hearing, unless there are unnecessary delays in finalizing the hearing caused by the provider or the provider's representative.

Authority: State Plan, Title XIX of the Social Security Act. 42 C.F.R. Sec. 401, et seq. Rule effective October 1, 1982. Amended April 11, 1985. Effective date of amendment January 1, 1986.

Rule No. 560-X-3-.04. Fair Hearing Procedures.

(1) A hearing shall be impartially conducted and held at a time and place which is reasonably convenient for the parties, and written notice of such time and place shall be given by the Director,

Hearings, or the designated Hearing Officer, at least 10 (10) calendar days before the hearing is to be held. This written notice will also contain information explaining the complaint's rights and procedures regarding a hearing.

(2) A complainant may be represented or assisted by legal counsel at his own expense; he may have a friend or relative present his case; or he may present his case himself.

(3) A complainant or his representative must attend his hearing unless he is given written permission by appropriate authority to be absent. His failure to attend shall leave the Hearing Officer with no alternative but to proceed with the hearing and render a conclusion and recommendation in his absence based upon evidence presented by the Alabama Medicaid Agency representatives.

(4) The complainant and/or his authorized representative may call witnesses, and may examine witnesses called by others.

Authority: Section 1902(a)(3), Title XIX, Social Security Act; 42 CFR, 431.200 thru 431.245, and Section 41-22-12, Alabama Administrative Procedure Act. Rule effective October 1, 1982. Effective date of amendment August 9, 1984.

#### Rule No. 560-X-3-.05. Documentary Hearing Procedures.

(1) Documentary Hearings are based solely upon the written or printed evidence presented to the Hearing Officer by both the complainant and the agency. Complainants should, therefore, submit complete records of all claims filed, correspondence, rejections, forms and attachments at the time the original written request for a hearing is forwarded to the agency.

Authority: State Plan, Title XIX of the Social Security Act. 42 C.F.R. Section 401, et seq. Rule effective August 10, 1987.

#### Rule No. 560-X-3-.06. Action by Agency On Hearing.

(1) Prompt, definitive, and final administrative action will be taken within sixty (60) days between the request for a hearing and the rendering of the decision, unless there are extenuating circumstances that require additional time. If the hearing is not completed within sixty days, the recipient or provider will be notified of the reason for the delay. In any event, final administrative action will be taken within ninety (90) days from the date of request for a hearing. The complainant will receive written notification of the decision.

(2) Recommendations of the Hearing Officer shall be based exclusively on evidence and other material introduced at the hearing. A verbatim transcript of testimony and exhibits, or an official report by the Hearing Officer containing the substance of what transpired at the hearing, together with all papers and requests filed in the proceeding and the Hearing Officer's recommendations, shall constitute the exclusive record for decision on a live hearing and shall be available to the

complainant at any reasonable time. The storage, proper maintenance and security of such records shall be the responsibility of the Director, Hearings, Alabama Medicaid Agency.

(3) Adverse decisions approved by the Commissioner, as the hearing authority, shall contain a statement that rehearing and/or judicial review of this decision is available pursuant to the provisions of the Alabama Administrative Procedure Act. The Commissioner shall notify the requestor, in writing regarding the hearing decision.

Authority: Section 1902(a)(3), Title XIX of the Social Security Act; 42 CFR, Sec. 431.200 thru 431.245, and Section 41-22-17, Alabama Administrative Procedure Act. Rule effective October 1, 1982. Amended August 9, 1984. Effective date of amendment January 1, 1986.

Rule No. 560-X-3-.07. Denial of a Hearing.

(1) If the request for a hearing, in the opinion of Medicaid legal counsel, presents only a legal issue, and the validity of the controlling law or regulation is not challenged in the hearing request, a fair hearing request may be denied.

(2) If eligibility of a provider or a recipient has been terminated because of a criminal conviction for Medicaid fraud or abuse, or if a provider has been terminated because of loss of required licensure, then no fair hearing need be given. A certified copy of the judgement of conviction or of the decision to revoke or suspend a provider's license shall be conclusive proof of ineligibility for further participation in the Medicaid Program. The pendency of an appeal for any such conviction or license revocation or suspension shall not abate the termination of Medicaid eligibility. If a conviction, or license revocation or suspension is reversed on appeal, the recipient or provider may apply for reinstatement to the Medicaid program. However, the reasons for the reversal will be scrutinized by Medicaid and reinstatement will be at the sole discretion of the Commissioner.

Authority: State Plan, Title XIX of the Social Security Act. 42 C.F.R. Section 401, et seq. Rule effective October 1, 1982.